

JUDICIAL ETHICS AND ENFORCEMENT

The Federal Judiciary lacks a single set of rules governing judicial ethics or enforcement. Therefore, this document splits the discussion of judicial ethics into two parts: that pertaining to the lower Federal Courts and that for the Supreme Court of the United States (SCOTUS).

Judicial Ethics for Federal Judges (other than SCOTUS)

Since 1973 (with subsequent modifications), the United States Judicial Conference has composed and updated a [Code of Conduct](#) directed to all federal judges **other than SCOTUS Justices**.

- Federal judges must abide by this set of ethical principles and guidelines.
- The Code of Conduct provides guidance for judges on issues of judicial integrity and independence, judicial diligence and impartiality, permissible extra-judicial activities, and the avoidance of impropriety or the appearance of impropriety.

An associated statute, [28 U.S.C. § 455](#), includes the following restrictions:

- “Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.”
- Provisions that enumerate specific requirements for recusal. For example, judges may not hear cases in which they have either personal knowledge of the disputed facts, a personal bias concerning a party to the case, earlier involvement in the case as a lawyer, or a financial interest in any party or subject matter of the case.
- Other rules and parameters, spelled out in detail.

The [Judicial Conduct and Disability Act of 1980](#) (28 U.S.C. §§ 351–364) provides a complaint and disciplinary framework for federal judges.

- This Act provides for sanctions for conduct that does not rise to impeachment.
- Any person may file a complaint against a federal judge alleging that the judge “engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts” or “is unable to discharge all the duties of office by reason of mental or physical disability.”
- The Code of Conduct can be relevant to determining whether a judge has engaged in prejudicial conduct.

Judicial Ethics for SCOTUS

According to *Politico*, 75% of voters support a binding ethics code for SCOTUS.

SCOTUS Justices are the only members of the federal judiciary not covered by a code of conduct. Yet, some of the most intense current interest in SCOTUS reform focuses on multiple Justices' alleged ethics violations for which there is no existing regulatory recourse.

Key issues:

- Justices say they “consult” the Code of Conduct that applies for all other federal judges, but there is open debate about whether they follow the Code in fact.
- SCOTUS announced a voluntary code of their own making, November 2023.¹
- However, the voluntary code has no enforcement mechanism and was criticized from its inception for including carveouts to permit questionable ethical behavior to continue.
- 28 U.S.C. § 455 applies to SCOTUS; however, each Justice makes their own decisions on when and whether to recuse. When they do, it is typically without explanation, i.e., without transparency for or against recusal.

Two methods have been proposed to get to a Code of Conduct for SCOTUS:

- Internal disciplinary procedures would leave the Justices (or a subset) to police themselves, a matter they have resisted directly and indirectly.
- External imposition by Congressional statute could direct the Judicial Conference to craft a code for SCOTUS or make the existing code apply. Potential problems with existing code:
 - Inferior court judges would be evaluating Justices higher up the judicial hierarchy.
 - Permitting “any person” to file a complaint opens up potential for abuse.

Then, the issue of enforcement would remain to be addressed.

Proposals for recusal:

- Statutory standards exist, in [28 U.S.C. § 455](#), but Justices are free to make recusal decisions on their own, without review and without explanation for or against recusal.
- Proposals for recusal reform tend to focus on making the process more transparent and accountable. For example:
 - Require Justices to state reasons for recusal or failure to recuse.
 - Establish a formal procedure for recusal decisions to be reviewed by another Justice, multiple Justices, or the entire Court.
 - Reform recusal laws to make it easier for Justices to avoid financial conflicts.

¹ Congressional Research Service, [Code for Supreme Court \(11/2023\)](#), [Legal Questions and Considerations \(4/2022\)](#)

Conclusion

Scholars and organizations disagree (largely along political lines) on Congress' constitutional authority to impose an enforceable ethics code on SCOTUS. No consensus has yet been found in Congress either.

Principles to Consider

LWVUS positions on the Congress and the Presidency, the other two branches of government, pay little attention to specific policy approaches; instead, they focus on principles. Those principles were designed for evaluating future policy proposals and ensure a durable foundation for advocacy. Overriding principles associated with the issues of ethics and ethics enforcement include:

<ul style="list-style-type: none">• Judicial independence• Judicial accountability• Judicial transparency	<ul style="list-style-type: none">• Judicial ethics• Legitimacy
---	--